

## **Coalition for Effective and Efficient Tax Administration (CEETA)**

### **Legislative Proposals are Needed to Address IRS Use of Litigation Tactics During an Audit**

- CEETA is concerned about the IRS's increasing use of aggressively confrontational litigation tactics during an audit, rather than focusing on the correctness of a taxpayer's return and resolving disagreements efficiently.
- Focusing on litigation destroys cooperative relationships between taxpayers and the IRS, impedes transparent interaction, decreases efficiency, increases costs, and increases uncertainty for both taxpayers and the IRS.
- IRS litigation tactics: (1) deny taxpayers access to administrative resolution of tax disputes, (2) prejudice taxpayers' right to a fair and impartial hearing with the IRS Appeals Office or in the courts, and (3) needlessly extend audits for compliant taxpayers.
- The vast majority of tax issues are resolved administratively, either by the IRS Examination Division or the Appeals Office, which is an independent function charged with providing a fair and impartial resolution of tax controversies following an audit.
- The IRS Restructuring and Reform Act of 1998 requires that the IRS Commissioner ensure the availability of an impartial Appeals Office function.
- Recently, several taxpayers have been denied or delayed access to Appeals through one of the following litigation tactics:
  - Using a designated summons to request information obtainable through other means. Designated summonses suspend the statute of limitations, delaying access to Appeals.
    - CEETA recommends that, in light of the fact that the IRS is phasing out the Coordinated Industry Case program, the need for designated summonses be reconsidered. In the event designated summons authority is retained, CEETA requests that section 6503(j) be amended to require written approval by the Commissioner of the Large Business & International ("LB&I") Division as well as by LB&I Division Counsel and that such written approval be attached to the summons.
    - CEETA also recommends that in a court proceeding to enforce a designated summons, the Secretary should bear the burden of demonstrating that the taxpayer did not cooperate with reasonable requests by the Secretary for witnesses, information, documents, meetings, and interviews.
  - Issuing a statutory notice of deficiency (90-day letter) without first issuing a 30-day letter, which provides the taxpayer the opportunity to resolve their case with Appeals before filing a Tax Court petition.
    - CEETA recommends that section 7123 be amended to provide a statutory right to review by Appeals, in most cases before the issuance of a notice of deficiency.

- Designating a case for litigation, thereby precluding access to Appeals or the Competent Authority process, even though other taxpayers with the same issue may be treated differently.
  - In light of CEETA's recommendation that section 7123 be amended to provide a statutory right to review by Appeals, CEETA recommends that Congress restrict the IRS's ability to designate cases for litigation.
- Another example of an aggressive litigation tactic has been the IRS hiring of a law firm to participate in a tax audit of a taxpayer.
  - CEETA recommends that sections 7602 and/or 6103 be amended to prohibit the taking of testimony and examination of books and witnesses by contractors.